

AB 809 (Logue) – Healing Arts: Telehealth

Introduced February 21, 2013, Amended April 29, 2013

This bill would require prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth at the originating site to verbally inform the patient about the use of telehealth and request the patient's verbal consent, which may apply in the present instance and for any subsequent use of telehealth. Provides that nothing in this bill precludes a patient from receiving in-person health care delivery services during a course of treatment after agreeing to receive services via telehealth.

Existing Law:

- 1) Defines telehealth as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.
- 2) Requires prior to the delivery of health care via telehealth, the health care provider at the originating site to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Requires the verbal consent to be documented in the patient's medical record.
- 3) States that all laws regarding the confidentiality of health care information and a patient's rights to his or her medical information apply to telehealth interactions.
- 4) Exempts a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.
- 5) States notwithstanding any other provision of law and for purposes of 1) through 4) above that the governing body of the hospital, whose patients are receiving the telehealth services, may grant privileges to and verify and approve credentials for providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in federal regulations. States legislative intent to authorize a hospital to grant privileges to and verify and approve credentials for providers of telehealth.
- 6) States that "telehealth" includes "telemedicine," as specified.
- 7) Makes the failure of a health care provider to comply with 1) through 6) above unprofessional conduct.
- 8) Provides that 1) through 7) above shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting or in a manner not otherwise authorized by law.

This bill:

- 1) Deletes the requirement in existing law that prior to the delivery of health care via telehealth, the health care provider at the originating site verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Deletes the requirement for the verbal consent to be documented in the patient's medical record.
- 2) Replaces the requirement deleted in 1) with a requirement that prior to delivery of health care via telehealth, the health care provider at the originating site shall provide the patient with a waiver for the course of treatment involving telehealth services to obtain informed consent for the agreed upon course of treatment. Requires the signed waiver to be contained in the patient's medical record.
- 3) Provides that nothing in this bill precludes a patient from receiving in-person health care delivery services during a course of treatment after agreeing to receive services via telehealth.
- 4) Removes the unprofessional conduct provision cross reference from licensing laws related to various health care providers including dentists, marriage and family therapists, licensed educational psychologists, licensees of the Board of Behavioral Sciences, and Social Workers.

Background:

According to the author, this bill would address a problem in existing law amended by AB 415 (Logue), Chapter 547, Statutes of 2011, the Telemedicine Advancement Act of 2011. The author states that AB 415 replaced and updated the outdated terminology of "telemedicine" with "telehealth," to reflect the current use of telehealth in California's healthcare system, providing a broader range of services than contained in the outdated 1996 model statute. Under AB 415, in order to ensure that both physicians and patients understood that telehealth may be used to treat a patient, a physician is required to obtain verbal consent for each and every visit with the patient.

Within a year after implementation, physicians have reported that this constant requirement is onerous and burdensome on their ability to treat patients efficiently. This bill will allow the first instance of consent to serve as consent for subsequent telehealth uses.

The California Association of Physician Groups supports this bill because telehealth is a critical component of the strategy to expand access to health care across California and this provides important clean-up provisions to help this technology come into its own. The Association of California Healthcare Districts states that eliminating the need for health care workers to obtain oral consent to receive telehealth services during every visit, allows a patient to be comfortable with the standard, that telehealth may be used when receiving health care services.

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Logue

February 21, 2013

An act to amend ~~Sections 1626.2, Section 2290.5, 4980.01, 4982, 4989.54, 4992.3, 4996, and 4999.90~~ of the Business and Professions Code, relating to telehealth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as amended, Logue. Healing arts: telehealth.

Existing law requires a health care provider, as defined, prior to the delivery of health care services via telehealth, as defined, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Existing law also provides that failure to comply with this requirement constitutes unprofessional conduct.

This bill would ~~instead require the health care provider at the originating site to provide the patient with a waiver for the course of treatment involving telehealth services to obtain informed consent for the agreed-upon course of treatment. The bill would require the signed waiver to be contained in the patient's medical record. The bill would make additional conforming changes: allow the verbal consent for the use of telehealth to apply in the present instance and for any subsequent use of telehealth.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1626.2 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~1626.2. A dentist licensed under this chapter is a licentiate for~~
4 ~~purposes of paragraph (2) of subdivision (a) of Section 805, and~~
5 ~~thus is a health care practitioner subject to the provisions of Section~~
6 ~~2290.5.~~
7 ~~SEC. 2.~~
8 ~~SECTION 1.~~ Section 2290.5 of the Business and Professions
9 Code is amended to read:
10 2290.5. (a) For purposes of this division, the following
11 definitions shall apply:
12 (1) “Asynchronous store and forward” means the transmission
13 of a patient’s medical information from an originating site to the
14 health care provider at a distant site without the presence of the
15 patient.
16 (2) “Distant site” means a site where a health care provider who
17 provides health care services is located while providing these
18 services via a telecommunications system.
19 (3) “Health care provider” means a person who is licensed under
20 this division.
21 (4) “Originating site” means a site where a patient is located at
22 the time health care services are provided via a telecommunications
23 system or where the asynchronous store and forward service
24 originates.
25 (5) “Synchronous interaction” means a real-time interaction
26 between a patient and a health care provider located at a distant
27 site.
28 (6) “Telehealth” means the mode of delivering health care
29 services and public health via information and communication
30 technologies to facilitate the diagnosis, consultation, treatment,
31 education, care management, and self-management of a patient’s
32 health care while the patient is at the originating site and the health
33 care provider is at a distant site. Telehealth facilitates patient
34 self-management and caregiver support for patients and includes

1 synchronous interactions and asynchronous store and forward
2 transfers.

3 (b) Prior to the delivery of health care via telehealth, the health
4 care provider *initiating the use of telehealth* at the originating site
5 shall ~~provide the patient with a waiver for the course of treatment~~
6 ~~involving telehealth services to obtain informed consent for the~~
7 ~~agreed-upon course of treatment~~ *verbally inform the patient about*
8 *the use of telehealth and request the patient's verbal consent, which*
9 *may apply in the present instance and for any subsequent use of*
10 *telehealth. The signed waiver verbal consent shall be contained*
11 *documented* in the patient's medical record.

12 (c) Nothing in this section shall preclude a patient from receiving
13 in-person health care delivery services during a course of treatment
14 after agreeing to receive services via telehealth.

15 (d) The failure of a health care provider to comply with this
16 section shall constitute unprofessional conduct. Section 2314 shall
17 not apply to this section.

18 (e) This section shall not be construed to alter the scope of
19 practice of any health care provider or authorize the delivery of
20 health care services in a setting, or in a manner, not otherwise
21 authorized by law.

22 (f) All laws regarding the confidentiality of health care
23 information and a patient's rights to his or her medical information
24 shall apply to telehealth interactions.

25 (g) This section shall not apply to a patient under the jurisdiction
26 of the Department of Corrections and Rehabilitation or any other
27 correctional facility.

28 (h) (1) Notwithstanding any other provision of law and for
29 purposes of this section, the governing body of the hospital whose
30 patients are receiving the telehealth services may grant privileges
31 to, and verify and approve credentials for, providers of telehealth
32 services based on its medical staff recommendations that rely on
33 information provided by the distant-site hospital or telehealth
34 entity, as described in Sections 482.12, 482.22, and 485.616 of
35 Title 42 of the Code of Federal Regulations.

36 (2) By enacting this subdivision, it is the intent of the Legislature
37 to authorize a hospital to grant privileges to, and verify and approve
38 credentials for, providers of telehealth services as described in
39 paragraph (1).

(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

SEC. 3. ~~Section 4980.01 of the Business and Professions Code is amended to read:~~

~~4980.01. (a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, the Licensed Professional Clinical Counselor Act, or the Psychology Licensing Act.~~

~~(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.~~

~~(c) (1) This chapter shall not apply to an employee working in any of the following settings if his or her work is performed solely under the supervision of the employer:~~

~~(A) A governmental entity.~~

~~(B) A school, college, or university.~~

~~(C) An institution that is both nonprofit and charitable.~~

~~(2) This chapter shall not apply to a volunteer working in any of the settings described in paragraph (1) if his or her work is performed solely under the supervision of the entity, school, or institution.~~

~~(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5.~~

~~(e) Notwithstanding subdivisions (b) and (c), all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.~~

SEC. 4. ~~Section 4982 of the Business and Professions Code is amended to read:~~

~~4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:~~

1 ~~(a) The conviction of a crime substantially related to the~~
2 ~~qualifications, functions, or duties of a licensee or registrant under~~
3 ~~this chapter. The record of conviction shall be conclusive evidence~~
4 ~~only of the fact that the conviction occurred. The board may inquire~~
5 ~~into the circumstances surrounding the commission of the crime~~
6 ~~in order to fix the degree of discipline or to determine if the~~
7 ~~conviction is substantially related to the qualifications, functions,~~
8 ~~or duties of a licensee or registrant under this chapter. A plea or~~
9 ~~verdict of guilty or a conviction following a plea of nolo contendere~~
10 ~~made to a charge substantially related to the qualifications,~~
11 ~~functions, or duties of a licensee or registrant under this chapter~~
12 ~~shall be deemed to be a conviction within the meaning of this~~
13 ~~section. The board may order any license or registration suspended~~
14 ~~or revoked, or may decline to issue a license or registration when~~
15 ~~the time for appeal has elapsed, or the judgment of conviction has~~
16 ~~been affirmed on appeal, or, when an order granting probation is~~
17 ~~made suspending the imposition of sentence, irrespective of a~~
18 ~~subsequent order under Section 1203.4 of the Penal Code allowing~~
19 ~~the person to withdraw a plea of guilty and enter a plea of not~~
20 ~~guilty, or setting aside the verdict of guilty, or dismissing the~~
21 ~~accusation, information, or indictment.~~

22 ~~(b) Securing a license or registration by fraud, deceit, or~~
23 ~~misrepresentation on any application for licensure or registration~~
24 ~~submitted to the board, whether engaged in by an applicant for a~~
25 ~~license or registration, or by a licensee in support of any application~~
26 ~~for licensure or registration.~~

27 ~~(c) Administering to himself or herself any controlled substance~~
28 ~~or using of any of the dangerous drugs specified in Section 4022,~~
29 ~~or of any alcoholic beverage to the extent, or in a manner, as to be~~
30 ~~dangerous or injurious to the person applying for a registration or~~
31 ~~license or holding a registration or license under this chapter, or~~
32 ~~to any other person, or to the public, or, to the extent that the use~~
33 ~~impairs the ability of the person applying for or holding a~~
34 ~~registration or license to conduct with safety to the public the~~
35 ~~practice authorized by the registration or license. The board shall~~
36 ~~deny an application for a registration or license or revoke the~~
37 ~~license or registration of any person, other than one who is licensed~~
38 ~~as a physician and surgeon, who uses or offers to use drugs in the~~
39 ~~course of performing marriage and family therapy services.~~

1 ~~(d) Gross negligence or incompetence in the performance of~~
2 ~~marriage and family therapy.~~

3 ~~(e) Violating, attempting to violate, or conspiring to violate any~~
4 ~~of the provisions of this chapter or any regulation adopted by the~~
5 ~~board.~~

6 ~~(f) Misrepresentation as to the type or status of a license or~~
7 ~~registration held by the person, or otherwise misrepresenting or~~
8 ~~permitting misrepresentation of his or her education, professional~~
9 ~~qualifications, or professional affiliations to any person or entity.~~

10 ~~(g) Impersonation of another by any licensee, registrant, or~~
11 ~~applicant for a license or registration, or, in the case of a licensee,~~
12 ~~allowing any other person to use his or her license or registration.~~

13 ~~(h) Aiding or abetting, or employing, directly or indirectly, any~~
14 ~~unlicensed or unregistered person to engage in conduct for which~~
15 ~~a license or registration is required under this chapter.~~

16 ~~(i) Intentionally or recklessly causing physical or emotional~~
17 ~~harm to any client.~~

18 ~~(j) The commission of any dishonest, corrupt, or fraudulent act~~
19 ~~substantially related to the qualifications, functions, or duties of a~~
20 ~~licensee or registrant.~~

21 ~~(k) Engaging in sexual relations with a client, or a former client~~
22 ~~within two years following termination of therapy, soliciting sexual~~
23 ~~relations with a client, or committing an act of sexual abuse, or~~
24 ~~sexual misconduct with a client, or committing an act punishable~~
25 ~~as a sexually related crime, if that act or solicitation is substantially~~
26 ~~related to the qualifications, functions, or duties of a marriage and~~
27 ~~family therapist.~~

28 ~~(l) Performing, or holding oneself out as being able to perform,~~
29 ~~or offering to perform, or permitting any trainee or registered intern~~
30 ~~under supervision to perform, any professional services beyond~~
31 ~~the scope of the license authorized by this chapter.~~

32 ~~(m) Failure to maintain confidentiality, except as otherwise~~
33 ~~required or permitted by law, of all information that has been~~
34 ~~received from a client in confidence during the course of treatment~~
35 ~~and all information about the client that is obtained from tests or~~
36 ~~other means.~~

37 ~~(n) Prior to the commencement of treatment, failing to disclose~~
38 ~~to the client or prospective client the fee to be charged for the~~
39 ~~professional services, or the basis upon which that fee will be~~
40 ~~computed.~~

1 ~~(o) Paying, accepting, or soliciting any consideration,~~
2 ~~compensation, or remuneration, whether monetary or otherwise,~~
3 ~~for the referral of professional clients. All consideration,~~
4 ~~compensation, or remuneration shall be in relation to professional~~
5 ~~counseling services actually provided by the licensee. Nothing in~~
6 ~~this subdivision shall prevent collaboration among two or more~~
7 ~~licensees in a case or cases. However, no fee shall be charged for~~
8 ~~that collaboration, except when disclosure of the fee has been made~~
9 ~~in compliance with subdivision (n).~~

10 ~~(p) Advertising in a manner that is false, fraudulent, misleading,~~
11 ~~or deceptive, as defined in Section 651.~~

12 ~~(q) Reproduction or description in public, or in any publication~~
13 ~~subject to general public distribution, of any psychological test or~~
14 ~~other assessment device, the value of which depends in whole or~~
15 ~~in part on the naivete of the subject, in ways that might invalidate~~
16 ~~the test or device.~~

17 ~~(r) Any conduct in the supervision of any registered intern,~~
18 ~~associate clinical social worker, or trainee by any licensee that~~
19 ~~violates this chapter or any rules or regulations adopted by the~~
20 ~~board.~~

21 ~~(s) Performing or holding oneself out as being able to perform~~
22 ~~professional services beyond the scope of one's competence, as~~
23 ~~established by one's education, training, or experience. This~~
24 ~~subdivision shall not be construed to expand the scope of the~~
25 ~~license authorized by this chapter.~~

26 ~~(t) Permitting a trainee or registered intern under one's~~
27 ~~supervision or control to perform, or permitting the trainee or~~
28 ~~registered intern to hold himself or herself out as competent to~~
29 ~~perform, professional services beyond the trainee's or registered~~
30 ~~intern's level of education, training, or experience.~~

31 ~~(u) The violation of any statute or regulation governing the~~
32 ~~gaining and supervision of experience required by this chapter.~~

33 ~~(v) Failure to keep records consistent with sound clinical~~
34 ~~judgment, the standards of the profession, and the nature of the~~
35 ~~services being rendered.~~

36 ~~(w) Failure to comply with the child abuse reporting~~
37 ~~requirements of Section 11166 of the Penal Code.~~

38 ~~(x) Failure to comply with the elder and dependent adult abuse~~
39 ~~reporting requirements of Section 15630 of the Welfare and~~
40 ~~Institutions Code.~~

~~(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.~~

~~(z) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.~~

~~(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.~~

~~(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.~~

~~SEC. 5. Section 4989.54 of the Business and Professions Code is amended to read:~~

~~4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:~~

~~(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.~~

~~(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.~~

~~(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.~~

~~(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.~~

1 ~~(4) The board may order a license suspended or revoked, or~~
2 ~~may decline to issue a license when the time for appeal has elapsed,~~
3 ~~or the judgment of conviction has been affirmed on appeal, or~~
4 ~~when an order granting probation is made suspending the~~
5 ~~imposition of sentence, irrespective of a subsequent order under~~
6 ~~Section 1203.4 of the Penal Code allowing the person to withdraw~~
7 ~~a plea of guilty and enter a plea of not guilty or setting aside the~~
8 ~~verdict of guilty or dismissing the accusation, information, or~~
9 ~~indictment.~~

10 ~~(b) Securing a license by fraud, deceit, or misrepresentation on~~
11 ~~an application for licensure submitted to the board, whether~~
12 ~~engaged in by an applicant for a license or by a licensee in support~~
13 ~~of an application for licensure.~~

14 ~~(c) Administering to himself or herself a controlled substance~~
15 ~~or using any of the dangerous drugs specified in Section 4022 or~~
16 ~~an alcoholic beverage to the extent, or in a manner, as to be~~
17 ~~dangerous or injurious to himself or herself or to any other person~~
18 ~~or to the public or to the extent that the use impairs his or her ability~~
19 ~~to safely perform the functions authorized by the license. The board~~
20 ~~shall deny an application for a license or revoke the license of any~~
21 ~~person, other than one who is licensed as a physician and surgeon,~~
22 ~~who uses or offers to use drugs in the course of performing~~
23 ~~educational psychology.~~

24 ~~(d) Advertising in a manner that is false, fraudulent, misleading,~~
25 ~~or deceptive, as defined in Section 651.~~

26 ~~(e) Violating, attempting to violate, or conspiring to violate any~~
27 ~~of the provisions of this chapter or any regulation adopted by the~~
28 ~~board.~~

29 ~~(f) Commission of any dishonest, corrupt, or fraudulent act~~
30 ~~substantially related to the qualifications, functions, or duties of a~~
31 ~~licensee.~~

32 ~~(g) Denial of licensure, revocation, suspension, restriction, or~~
33 ~~any other disciplinary action imposed by another state or territory~~
34 ~~or possession of the United States or by any other governmental~~
35 ~~agency, on a license, certificate, or registration to practice~~
36 ~~educational psychology or any other healing art. A certified copy~~
37 ~~of the disciplinary action, decision, or judgment shall be conclusive~~
38 ~~evidence of that action.~~

39 ~~(h) Revocation, suspension, or restriction by the board of a~~
40 ~~license, certificate, or registration to practice as an educational~~

1 psychologist, a clinical social worker, professional clinical
2 counselor, or marriage and family therapist.

3 (i) Failure to keep records consistent with sound clinical
4 judgment, the standards of the profession, and the nature of the
5 services being rendered.

6 (j) Gross negligence or incompetence in the practice of
7 educational psychology.

8 (k) Misrepresentation as to the type or status of a license held
9 by the licensee or otherwise misrepresenting or permitting
10 misrepresentation of his or her education, professional
11 qualifications, or professional affiliations to any person or entity.

12 (l) Intentionally or recklessly causing physical or emotional
13 harm to any client.

14 (m) Engaging in sexual relations with a client or a former client
15 within two years following termination of professional services;
16 soliciting sexual relations with a client, or committing an act of
17 sexual abuse or sexual misconduct with a client or committing an
18 act punishable as a sexually related crime, if that act or solicitation
19 is substantially related to the qualifications, functions, or duties of
20 a licensed educational psychologist.

21 (n) Prior to the commencement of treatment, failing to disclose
22 to the client or prospective client the fee to be charged for the
23 professional services or the basis upon which that fee will be
24 computed.

25 (o) Paying, accepting, or soliciting any consideration,
26 compensation, or remuneration, whether monetary or otherwise,
27 for the referral of professional clients.

28 (p) Failing to maintain confidentiality, except as otherwise
29 required or permitted by law, of all information that has been
30 received from a client in confidence during the course of treatment
31 and all information about the client that is obtained from tests or
32 other means.

33 (q) Performing, holding himself or herself out as being able to
34 perform, or offering to perform any professional services beyond
35 the scope of the license authorized by this chapter or beyond his
36 or her field or fields of competence as established by his or her
37 education, training, or experience.

38 (r) Reproducing or describing in public, or in any publication
39 subject to general public distribution, any psychological test or
40 other assessment device the value of which depends in whole or

1 in part on the naivete of the subject in ways that might invalidate
2 the test or device. An educational psychologist shall limit access
3 to the test or device to persons with professional interests who can
4 be expected to safeguard its use.

5 (s) Aiding or abetting an unlicensed person to engage in conduct
6 requiring a license under this chapter.

7 (t) When employed by another person or agency, encouraging,
8 either orally or in writing, the employer's or agency's clientele to
9 utilize his or her private practice for further counseling without
10 the approval of the employing agency or administration.

11 (u) Failing to comply with the child abuse reporting
12 requirements of Section 11166 of the Penal Code.

13 (v) Failing to comply with the elder and adult dependent abuse
14 reporting requirements of Section 15630 of the Welfare and
15 Institutions Code.

16 (w) Willful violation of Chapter 1 (commencing with Section
17 123100) of Part 1 of Division 106 of the Health and Safety Code.

18 (x) (1) Engaging in an act described in Section 261, 286, 288a,
19 or 289 of the Penal Code with a minor or an act described in
20 Section 288 or 288.5 of the Penal Code regardless of whether the
21 act occurred prior to or after the time the registration or license
22 was issued by the board. An act described in this subdivision
23 occurring prior to the effective date of this subdivision shall
24 constitute unprofessional conduct and shall subject the licensee to
25 refusal, suspension, or revocation of a license under this section.

26 (2) The Legislature hereby finds and declares that protection of
27 the public, and in particular minors, from sexual misconduct by a
28 licensee is a compelling governmental interest, and that the ability
29 to suspend or revoke a license for sexual conduct with a minor
30 occurring prior to the effective date of this section is equally
31 important to protecting the public as is the ability to refuse a license
32 for sexual conduct with a minor occurring prior to the effective
33 date of this section.

34 (y) Engaging in any conduct that subverts or attempts to subvert
35 any licensing examination or the administration of the examination
36 as described in Section 123.

37 (z) Impersonation of another by any licensee or applicant for a
38 license, or, in the case of a licensee, allowing any other person to
39 use his or her license.

1 ~~(aa) Permitting a person under his or her supervision or control~~
2 ~~to perform, or permitting that person to hold himself or herself out~~
3 ~~as competent to perform, professional services beyond the level~~
4 ~~of education, training, or experience of that person.~~

5 ~~SEC. 6. Section 4992.3 of the Business and Professions Code~~
6 ~~is amended to read:~~

7 ~~4992.3. The board may deny a license or a registration, or may~~
8 ~~suspend or revoke the license or registration of a licensee or~~
9 ~~registrant if he or she has been guilty of unprofessional conduct.~~
10 ~~Unprofessional conduct includes, but is not limited to, the~~
11 ~~following:~~

12 ~~(a) The conviction of a crime substantially related to the~~
13 ~~qualifications, functions, or duties of a licensee or registrant under~~
14 ~~this chapter. The record of conviction shall be conclusive evidence~~
15 ~~only of the fact that the conviction occurred. The board may inquire~~
16 ~~into the circumstances surrounding the commission of the crime~~
17 ~~in order to fix the degree of discipline or to determine if the~~
18 ~~conviction is substantially related to the qualifications, functions,~~
19 ~~or duties of a licensee or registrant under this chapter. A plea or~~
20 ~~verdict of guilty or a conviction following a plea of nolo contendere~~
21 ~~made to a charge substantially related to the qualifications,~~
22 ~~functions, or duties of a licensee or registrant under this chapter~~
23 ~~is a conviction within the meaning of this section. The board may~~
24 ~~order any license or registration suspended or revoked, or may~~
25 ~~decline to issue a license or registration when the time for appeal~~
26 ~~has elapsed, or the judgment of conviction has been affirmed on~~
27 ~~appeal, or, when an order granting probation is made suspending~~
28 ~~the imposition of sentence, irrespective of a subsequent order under~~
29 ~~Section 1203.4 of the Penal Code allowing the person to withdraw~~
30 ~~a plea of guilty and enter a plea of not guilty, or setting aside the~~
31 ~~verdict of guilty, or dismissing the accusation, information, or~~
32 ~~indictment.~~

33 ~~(b) Securing a license or registration by fraud, deceit, or~~
34 ~~misrepresentation on any application for licensure or registration~~
35 ~~submitted to the board, whether engaged in by an applicant for a~~
36 ~~license or registration, or by a licensee in support of any application~~
37 ~~for licensure or registration.~~

38 ~~(c) Administering to himself or herself any controlled substance~~
39 ~~or using any of the dangerous drugs specified in Section 4022 or~~
40 ~~any alcoholic beverage to the extent, or in a manner, as to be~~

1 dangerous or injurious to the person applying for a registration or
2 license or holding a registration or license under this chapter, or
3 to any other person, or to the public, or, to the extent that the use
4 impairs the ability of the person applying for or holding a
5 registration or license to conduct with safety to the public the
6 practice authorized by the registration or license. The board shall
7 deny an application for a registration or license or revoke the
8 license or registration of any person who uses or offers to use drugs
9 in the course of performing clinical social work. This provision
10 does not apply to any person also licensed as a physician and
11 surgeon under Chapter 5 (commencing with Section 2000) or the
12 Osteopathic Act who lawfully prescribes drugs to a patient under
13 his or her care.

14 (d) ~~Incompetence in the performance of clinical social work.~~

15 (e) ~~An act or omission that falls sufficiently below the standard~~
16 ~~of conduct of the profession as to constitute an act of gross~~
17 ~~negligence.~~

18 (f) ~~Violating, attempting to violate, or conspiring to violate this~~
19 ~~chapter or any regulation adopted by the board.~~

20 (g) ~~Misrepresentation as to the type or status of a license or~~
21 ~~registration held by the person, or otherwise misrepresenting or~~
22 ~~permitting misrepresentation of his or her education, professional~~
23 ~~qualifications, or professional affiliations to any person or entity.~~
24 ~~For purposes of this subdivision, this misrepresentation includes,~~
25 ~~but is not limited to, misrepresentation of the person's~~
26 ~~qualifications as an adoption service provider pursuant to Section~~
27 ~~8502 of the Family Code.~~

28 (h) ~~Impersonation of another by any licensee, registrant, or~~
29 ~~applicant for a license or registration, or, in the case of a licensee,~~
30 ~~allowing any other person to use his or her license or registration.~~

31 (i) ~~Aiding or abetting any unlicensed or unregistered person to~~
32 ~~engage in conduct for which a license or registration is required~~
33 ~~under this chapter.~~

34 (j) ~~Intentionally or recklessly causing physical or emotional~~
35 ~~harm to any client.~~

36 (k) ~~The commission of any dishonest, corrupt, or fraudulent act~~
37 ~~substantially related to the qualifications, functions, or duties of a~~
38 ~~licensee or registrant.~~

39 (l) ~~Engaging in sexual relations with a client or with a former~~
40 ~~client within two years from the termination date of therapy with~~

1 the client, soliciting sexual relations with a client, or committing
2 an act of sexual abuse, or sexual misconduct with a client, or
3 committing an act punishable as a sexually related crime, if that
4 act or solicitation is substantially related to the qualifications,
5 functions, or duties of a clinical social worker.

6 (m) ~~Performing, or holding one's self out as being able to~~
7 ~~perform, or offering to perform or permitting, any registered~~
8 ~~associate clinical social worker or intern under supervision to~~
9 ~~perform any professional services beyond the scope of one's~~
10 ~~competence, as established by one's education, training, or~~
11 ~~experience. This subdivision shall not be construed to expand the~~
12 ~~scope of the license authorized by this chapter.~~

13 (n) ~~Failure to maintain confidentiality, except as otherwise~~
14 ~~required or permitted by law, of all information that has been~~
15 ~~received from a client in confidence during the course of treatment~~
16 ~~and all information about the client that is obtained from tests or~~
17 ~~other means.~~

18 (o) ~~Prior to the commencement of treatment, failing to disclose~~
19 ~~to the client or prospective client the fee to be charged for the~~
20 ~~professional services, or the basis upon which that fee will be~~
21 ~~computed.~~

22 (p) ~~Paying, accepting, or soliciting any consideration,~~
23 ~~compensation, or remuneration, whether monetary or otherwise,~~
24 ~~for the referral of professional clients. All consideration,~~
25 ~~compensation, or remuneration shall be in relation to professional~~
26 ~~counseling services actually provided by the licensee. Nothing in~~
27 ~~this subdivision shall prevent collaboration among two or more~~
28 ~~licensees in a case or cases. However, no fee shall be charged for~~
29 ~~that collaboration, except when disclosure of the fee has been made~~
30 ~~in compliance with subdivision (o).~~

31 (q) ~~Advertising in a manner that is false, fraudulent, misleading,~~
32 ~~or deceptive, as defined in Section 651.~~

33 (r) ~~Reproduction or description in public, or in any publication~~
34 ~~subject to general public distribution, of any psychological test or~~
35 ~~other assessment device, the value of which depends in whole or~~
36 ~~in part on the naivete of the subject, in ways that might invalidate~~
37 ~~the test or device. A licensee shall limit access to that test or device~~
38 ~~to persons with professional interest who are expected to safeguard~~
39 ~~its use.~~

1 ~~(s) Any conduct in the supervision of any registered associate~~
2 ~~clinical social worker, intern, or trainee by any licensee that violates~~
3 ~~this chapter or any rules or regulations adopted by the board.~~

4 ~~(t) Failure to keep records consistent with sound clinical~~
5 ~~judgment, the standards of the profession, and the nature of the~~
6 ~~services being rendered.~~

7 ~~(u) Failure to comply with the child abuse reporting~~
8 ~~requirements of Section 11166 of the Penal Code.~~

9 ~~(v) Failure to comply with the elder and dependent adult abuse~~
10 ~~reporting requirements of Section 15630 of the Welfare and~~
11 ~~Institutions Code.~~

12 ~~(w) Willful violation of Chapter 1 (commencing with Section~~
13 ~~123100) of Part 1 of Division 106 of the Health and Safety Code.~~

14 ~~(x) (1) Engaging in an act described in Section 261, 286, 288a,~~
15 ~~or 289 of the Penal Code with a minor or an act described in~~
16 ~~Section 288 or 288.5 of the Penal Code regardless of whether the~~
17 ~~act occurred prior to or after the time the registration or license~~
18 ~~was issued by the board. An act described in this subdivision~~
19 ~~occurring prior to the effective date of this subdivision shall~~
20 ~~constitute unprofessional conduct and shall subject the licensee to~~
21 ~~refusal, suspension, or revocation of a license under this section.~~

22 ~~(2) The Legislature hereby finds and declares that protection of~~
23 ~~the public, and in particular minors, from sexual misconduct by a~~
24 ~~licensee is a compelling governmental interest, and that the ability~~
25 ~~to suspend or revoke a license for sexual conduct with a minor~~
26 ~~occurring prior to the effective date of this section is equally~~
27 ~~important to protecting the public as is the ability to refuse a license~~
28 ~~for sexual conduct with a minor occurring prior to the effective~~
29 ~~date of this section.~~

30 ~~(y) Engaging in any conduct that subverts or attempts to subvert~~
31 ~~any licensing examination or the administration of the examination~~
32 ~~as described in Section 123.~~

33 ~~SEC. 7. Section 4996 of the Business and Professions Code is~~
34 ~~amended to read:~~

35 ~~4996. (a) Only individuals who have received a license under~~
36 ~~this article may style themselves as "Licensed Clinical Social~~
37 ~~Workers." Every individual who styles himself or herself or who~~
38 ~~holds himself or herself out to be a licensed clinical social worker,~~
39 ~~or who uses any words or symbols indicating or tending to indicate~~
40 ~~that he or she is a licensed clinical social worker, without holding~~

1 his or her license in good standing under this article, is guilty of a
2 misdemeanor.

3 (b) ~~It is unlawful for any person to engage in the practice of~~
4 ~~clinical social work unless at the time of so doing that person holds~~
5 ~~a valid, unexpired, and unrevoked license under this article.~~

6 (e) ~~A clinical social worker licensed under this chapter is a~~
7 ~~licentiate for purposes of paragraph (2) of subdivision (a) of Section~~
8 ~~805, and thus is a health care practitioner subject to the provisions~~
9 ~~of Section 2290.5.~~

10 SEC. 8. ~~Section 4999.90 of the Business and Professions Code~~
11 ~~is amended to read:~~

12 ~~4999.90. The board may refuse to issue any registration or~~
13 ~~license, or may suspend or revoke the registration or license of~~
14 ~~any intern or licensed professional clinical counselor, if the~~
15 ~~applicant, licensee, or registrant has been guilty of unprofessional~~
16 ~~conduct. Unprofessional conduct includes, but is not limited to,~~
17 ~~the following:~~

18 (a) ~~The conviction of a crime substantially related to the~~
19 ~~qualifications, functions, or duties of a licensee or registrant under~~
20 ~~this chapter. The record of conviction shall be conclusive evidence~~
21 ~~only of the fact that the conviction occurred. The board may inquire~~
22 ~~into the circumstances surrounding the commission of the crime~~
23 ~~in order to fix the degree of discipline or to determine if the~~
24 ~~conviction is substantially related to the qualifications, functions,~~
25 ~~or duties of a licensee or registrant under this chapter. A plea or~~
26 ~~verdict of guilty or a conviction following a plea of nolo contendere~~
27 ~~made to a charge substantially related to the qualifications,~~
28 ~~functions, or duties of a licensee or registrant under this chapter~~
29 ~~shall be deemed to be a conviction within the meaning of this~~
30 ~~section. The board may order any license or registration suspended~~
31 ~~or revoked, or may decline to issue a license or registration when~~
32 ~~the time for appeal has elapsed, or the judgment of conviction has~~
33 ~~been affirmed on appeal, or, when an order granting probation is~~
34 ~~made suspending the imposition of sentence, irrespective of a~~
35 ~~subsequent order under Section 1203.4 of the Penal Code allowing~~
36 ~~the person to withdraw a plea of guilty and enter a plea of not~~
37 ~~guilty, or setting aside the verdict of guilty, or dismissing the~~
38 ~~accusation, information, or indictment.~~

39 (b) ~~Securing a license or registration by fraud, deceit, or~~
40 ~~misrepresentation on any application for licensure or registration~~

1 submitted to the board, whether engaged in by an applicant for a
2 license or registration, or by a licensee in support of any application
3 for licensure or registration.

4 (e) ~~Administering to himself or herself any controlled substance~~
5 ~~or using any of the dangerous drugs specified in Section 4022, or~~
6 ~~any alcoholic beverage to the extent, or in a manner, as to be~~
7 ~~dangerous or injurious to the person applying for a registration or~~
8 ~~license or holding a registration or license under this chapter, or~~
9 ~~to any other person, or to the public, or, to the extent that the use~~
10 ~~impairs the ability of the person applying for or holding a~~
11 ~~registration or license to conduct with safety to the public the~~
12 ~~practice authorized by the registration or license. The board shall~~
13 ~~deny an application for a registration or license or revoke the~~
14 ~~license or registration of any person, other than one who is licensed~~
15 ~~as a physician and surgeon, who uses or offers to use drugs in the~~
16 ~~course of performing licensed professional clinical counseling~~
17 ~~services.~~

18 (d) ~~Gross negligence or incompetence in the performance of~~
19 ~~licensed professional clinical counseling services.~~

20 (e) ~~Violating, attempting to violate, or conspiring to violate any~~
21 ~~of the provisions of this chapter or any regulation adopted by the~~
22 ~~board.~~

23 (f) ~~Misrepresentation as to the type or status of a license or~~
24 ~~registration held by the person, or otherwise misrepresenting or~~
25 ~~permitting misrepresentation of his or her education, professional~~
26 ~~qualifications, or professional affiliations to any person or entity.~~

27 (g) ~~Impersonation of another by any licensee, registrant, or~~
28 ~~applicant for a license or registration, or, in the case of a licensee~~
29 ~~or registrant, allowing any other person to use his or her license~~
30 ~~or registration.~~

31 (h) ~~Aiding or abetting, or employing, directly or indirectly, any~~
32 ~~unlicensed or unregistered person to engage in conduct for which~~
33 ~~a license or registration is required under this chapter.~~

34 (i) ~~Intentionally or recklessly causing physical or emotional~~
35 ~~harm to any client.~~

36 (j) ~~The commission of any dishonest, corrupt, or fraudulent act~~
37 ~~substantially related to the qualifications, functions, or duties of a~~
38 ~~licensee or registrant.~~

39 (k) ~~Engaging in sexual relations with a client, or a former client~~
40 ~~within two years following termination of therapy, soliciting sexual~~

1 ~~relations with a client, or committing an act of sexual abuse, or~~
2 ~~sexual misconduct with a client, or committing an act punishable~~
3 ~~as a sexually related crime, if that act or solicitation is substantially~~
4 ~~related to the qualifications, functions, or duties of a licensed~~
5 ~~professional clinical counselor.~~

6 ~~(l) Performing, or holding oneself out as being able to perform,~~
7 ~~or offering to perform, or permitting any trainee, applicant, or~~
8 ~~registrant under supervision to perform, any professional services~~
9 ~~beyond the scope of the license authorized by this chapter.~~

10 ~~(m) Failure to maintain confidentiality, except as otherwise~~
11 ~~required or permitted by law, of all information that has been~~
12 ~~received from a client in confidence during the course of treatment~~
13 ~~and all information about the client which is obtained from tests~~
14 ~~or other means.~~

15 ~~(n) Prior to the commencement of treatment, failing to disclose~~
16 ~~to the client or prospective client the fee to be charged for the~~
17 ~~professional services, or the basis upon which that fee will be~~
18 ~~computed.~~

19 ~~(o) Paying, accepting, or soliciting any consideration,~~
20 ~~compensation, or remuneration, whether monetary or otherwise,~~
21 ~~for the referral of professional clients. All consideration,~~
22 ~~compensation, or remuneration shall be in relation to professional~~
23 ~~clinical counseling services actually provided by the licensee.~~
24 ~~Nothing in this subdivision shall prevent collaboration among two~~
25 ~~or more licensees in a case or cases. However, no fee shall be~~
26 ~~charged for that collaboration, except when disclosure of the fee~~
27 ~~has been made in compliance with subdivision (n).~~

28 ~~(p) Advertising in a manner that is false, fraudulent, misleading,~~
29 ~~or deceptive, as defined in Section 651.~~

30 ~~(q) Reproduction or description in public, or in any publication~~
31 ~~subject to general public distribution, of any psychological test or~~
32 ~~other assessment device, the value of which depends in whole or~~
33 ~~in part on the naivete of the subject, in ways that might invalidate~~
34 ~~the test or device.~~

35 ~~(r) Any conduct in the supervision of a registered intern,~~
36 ~~associate clinical social worker, or clinical counselor trainee by~~
37 ~~any licensee that violates this chapter or any rules or regulations~~
38 ~~adopted by the board.~~

39 ~~(s) Performing or holding oneself out as being able to perform~~
40 ~~professional services beyond the scope of one's competence, as~~

1 ~~established by one's education, training, or experience. This~~
2 ~~subdivision shall not be construed to expand the scope of the~~
3 ~~license authorized by this chapter.~~

4 ~~(t) Permitting a clinical counselor trainee or intern under one's~~
5 ~~supervision or control to perform, or permitting the clinical~~
6 ~~counselor trainee or intern to hold himself or herself out as~~
7 ~~competent to perform, professional services beyond the clinical~~
8 ~~counselor trainee's or intern's level of education, training, or~~
9 ~~experience.~~

10 ~~(u) The violation of any statute or regulation of the standards~~
11 ~~of the profession, and the nature of the services being rendered,~~
12 ~~governing the gaining and supervision of experience required by~~
13 ~~this chapter.~~

14 ~~(v) Failure to keep records consistent with sound clinical~~
15 ~~judgment, the standards of the profession, and the nature of the~~
16 ~~services being rendered.~~

17 ~~(w) Failure to comply with the child abuse reporting~~
18 ~~requirements of Section 11166 of the Penal Code.~~

19 ~~(x) Failing to comply with the elder and dependent adult abuse~~
20 ~~reporting requirements of Section 15630 of the Welfare and~~
21 ~~Institutions Code.~~

22 ~~(y) Repeated acts of negligence.~~

23 ~~(z) (1) Engaging in an act described in Section 261, 286, 288a,~~
24 ~~or 289 of the Penal Code with a minor or an act described in~~
25 ~~Section 288 or 288.5 of the Penal Code regardless of whether the~~
26 ~~act occurred prior to or after the time the registration or license~~
27 ~~was issued by the board. An act described in this subdivision~~
28 ~~occurring prior to the effective date of this subdivision shall~~
29 ~~constitute unprofessional conduct and shall subject the licensee to~~
30 ~~refusal, suspension, or revocation of a license under this section.~~

31 ~~(2) The Legislature hereby finds and declares that protection of~~
32 ~~the public, and in particular minors, from sexual misconduct by a~~
33 ~~licensee is a compelling governmental interest, and that the ability~~
34 ~~to suspend or revoke a license for sexual conduct with a minor~~
35 ~~occurring prior to the effective date of this section is equally~~
36 ~~important to protecting the public as is the ability to refuse a license~~
37 ~~for sexual conduct with a minor occurring prior to the effective~~
38 ~~date of this section.~~

1 ~~(aa) Engaging in any conduct that subverts or attempts to subvert~~
2 ~~any licensing examination or the administration of an examination~~
3 ~~as described in Section 123.~~

4 ~~(ab) Revocation, suspension, or restriction by the board of a~~
5 ~~license, certificate, or registration to practice as a professional~~
6 ~~clinical counselor, clinical social worker, educational psychologist,~~
7 ~~or marriage and family therapist.~~

8 ~~(ac) Willful violation of Chapter 1 (commencing with Section~~
9 ~~123100) of Part 1 of Division 106 of the Health and Safety Code.~~

10 ~~SEC. 9.~~

11 ~~SEC. 2.~~ This act is an urgency statute necessary for the
12 ~~immediate preservation of the public peace, health, or safety within~~
13 ~~the meaning of Article IV of the Constitution and shall go into~~
14 ~~immediate effect. The facts constituting the necessity are:~~

15 ~~In order to protect the health and safety of the public due to a~~
16 ~~lack of access to health care providers in rural and urban medically~~
17 ~~underserved areas of California, the increasing strain on existing~~
18 ~~providers expected to occur with the implementation of the federal~~
19 ~~Patient Protection and Affordable Care Act, and the assistance that~~
20 ~~further implementation of telehealth can provide to help relieve~~
21 ~~these burdens, it is necessary for this act to take effect immediately.~~